

JACK ORTMAN

IBLA 82-868

Decided October 6, 1983

Appeal from decision of the Wyoming State Office, Bureau of Land Management, rejecting application for oil and gas lease W-76417.

Affirmed.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: Applications: Filing -- Oil and Gas leases: Applications: Legibility

A simultaneous oil and gas lease application is properly rejected if the applicant's identity cannot be established by examining the application form because the applicant signed the application with an illegible signature and placed the name of some other person in the space provided for the name of the applicant.

2. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: Applications: Filing

An applicant for an oil and gas lease must place his personal or business address on a simultaneous application. An applicant has not complied with this requirement if the name of some other person appears as addressee, even though correspondence addressed to that person is to be received in the care of the applicant.

APPEARANCES: John Mage, Esq., Washington, D.C., for appellant.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Jack Ortman has appealed from the May 3, 1982, decision of the Wyoming State Office, Bureau of Land Management (BLM), rejecting the first-drawn application for oil and gas lease W-76417. This application was completed as follows:

FARIS TONIA
7 EAST 48th ST. C/O ORTMAN
NEW YORK NEW YORK 10017

The signature appearing on the reverse side of the form in the space provided for the applicant's signature is illegible. 1/ On the basis of information disclosed on the form, BLM properly construed this as an application from Tonia Faris 2/ and prepared the forms for an oil and gas lease to be issued in her name. The lease forms were signed by Ortman and returned with a letter from him in which he explained that he, not Faris, was the applicant: "The name of Ms Faris, a minor and my granddaughter, was placed on the form to indicate my intention later to transfer my rights in the lease. But no such transfer had been formally or informally agreed to. (See Blanche Chomicki, 51 IBLA 128 (1981))." Upon receipt of this letter, BLM rejected the application. The decision stated that the name Tonia Faris is clearly entered in the spaces provided for the applicant's name, that it could not be determined from Ortman's illegible signature that he was the applicant, and that an application must be completed in such a manner that there is no question as to the identity of the applicant.

[1] The principles governing adjudication of simultaneous lease applications are well established. A noncompetitive oil and gas lease may be issued only to the first-qualified applicant. See 30 U.S.C. § 226(c) (1976). "If the Secretary is to fulfill his obligation to lease to the first-qualified applicant, as strict a compliance with the regulations as possible is necessary." Shearn v. Andrus, No. 77-1228, Slip Op. at 6 (10th Cir. Sept. 19, 1977), quoted in Sorensen v. Andrus, 456 F. Supp. 499, 502 (D. Wyo. 1978). Applicants under the simultaneous filing system are precluded from correcting applications after the drawing has been held because doing so would infringe on the rights of other drawees who may be qualified. See Ballard E. Spencer Trust, Inc. v. Morton, 544 F.2d 1067, 1070 (10th Cir. 1976). In applying these principles, we fail to see how someone can become the first-qualified applicant if his identity cannot be established at the moment the card is drawn because he signed the application with an illegible signature and placed the name of some other person in the space provided for the name of the applicant. 3/

It may not always be practical to impose an exacting standard of legibility upon signatures of oil and gas lease applicants, but BLM must be able to identify the person signing the application. The Board has affirmed the rejection of over-the-counter oil and gas offers where an offeror's signature

1/ Counsel for appellant disputes BLM's characterization of Mr. Ortman's signature as illegible. "While Mr. Ortman's signature is florid and idiosyncratic, it is not 'illegible.' Furthermore, it is evidently not the signature 'Tonia Faris'" (Statement of Reasons at 2 n.1). The writing in the space designated for the applicant's signature may, however, be construed as the signature of Tonia Faris or any number of other persons as easily as it could be construed as that of appellant. We recognize that most signatures are illegible to some degree; and we do not object to an applicant's use of an illegible signature if his identity as applicant is clearly disclosed on the application.

2/ The form instructs applicants to place last names first.

3/ Unlike the situation in Liberty Petroleum Corp., 68 IBLA 387 (1982), the application contains no reference to any other form on file at the time of the drawing from which the identity of the signatory could be established.

was so illegible that his identity could not be established. William D. Sexton, 9 IBLA 316 (1973); R. C. Bailey, 7 IBLA 266 (1972). Although the regulation applicable to the offers in those cases only required that offers be "signed in ink," ^{4/} the court affirmed the Department's decisions and recognized the need for the Department to be able to identify oil and gas lease applicants. Burglin v. Morton, 527 F.2d 486 (9th Cir.), cert. denied, 425 U.S. 973 (1976). Those decisions involved offers filed over the counter where priority is established by assignment of serial number. With simultaneously filed applications, the need for BLM to be able to identify applicants is even more compelling in order to assure compliance with the regulatory prohibitions on multiple filing, 43 CFR 3112.2-1(f) and 3112.6-1(c) (1981). ^{5/} The large volume of applications filed makes this job difficult. ^{6/} Although appellant may not have intended to conceal his identity, his manner of executing the application had this result. Were each applicant permitted to conceal his identity in like manner, the difficult task of assuring a fair drawing would become absolutely impossible. In R. C. Bailey, *supra* at 268, we noted that:

If it is beyond the normal ability of a literate person to ascertain the identity of a party to a lease offer, the fault lies in the offer and is attributable to those who prepared and submitted it, and they may not shift that fault to the Bureau because its employees are unable to decipher an incomprehensible scrawl.

As it was appellant's responsibility to execute his application in a manner so that BLM would be able to identify him when the application was drawn, his failure to do so precludes recognition of his application as having priority over others which may have been properly completed. ^{7/}

^{4/} The regulation pertinent to Ortman's application similarly provides: "The application shall be holographically (manually) signed in ink by the applicant." 43 CFR 3112.2-1(b) (1981). The Department recently revised and republished the oil and gas regulations of 43 CFR Group 3000, effective Aug. 22, 1983. 48 FR 33648-82 (July 22, 1983), and 43 CFR 3112.2-1(c), requires that "[t]he application shall be signed and dated at the time of signing." 48 FR at 33678. Ortman's application must be adjudicated pursuant to regulations in effect when it was filed. See Irma Spear, 52 IBLA 360 (1981).

^{5/} These requirements appear in the revised regulations at 43 CFR 3112.2-1(f) and 3112.5-1(b), 48 FR at 33678, 33679.

^{6/} We note that 4,256 other applicants filed for the same parcel as Ortman. The total filings for all parcels for which applications were taken by the Wyoming State Office at that time numbered 368,769.

^{7/} A number of recent Board decisions discussing illegibility of signatures concern applications signed by agents, not by the applicants themselves. Citing the requirement of 43 CFR 3112.2-1(b) (1981) that such applications "be rendered in a manner to reveal the name of the applicant, the name of the signatory and their relationship," the Board held that an application is properly rejected if the signature is illegible and the agent signing the offer is unidentified. E.g., Maurice W. Coburn, 75 IBLA 293 (1983); Martin Williams & Judson, 74 IBLA 342 (1983); cf. Liberty Petroleum Corp., supra (arguably illegible signature no basis for rejection where application contained reference to BLM file identifying signatory).

Appellant contends that the decision in Blanche Chomicki, 51 IBLA 128 (1980), requires BLM to approve his application. In that case, the applicant filled out the front of the application with her name plus the phrase "et al." She explained that the phrase referred to her minor grandsons to whom she "wished to transfer part of the lease * * * when they reached legal age," much like Ortman wished to do with respect to his granddaughter, Tonia Faris. BLM had rejected Chomicki's application on the ground that she had failed to disclose other parties in interest. The Board reversed the rejection of her application, finding that Chomicki's grandsons had no present or future interest in the lease. Unlike Ortman, however, Chomicki had executed her application in a manner which enabled BLM to identify who the applicant was. It was clear that she signed it herself and indicated that there were no other parties in interest, and her name did appear on the first line. Appellant points out that his name appears on the application and contends that the absence of the "full name" has not been a sufficient reason to reject an application, citing Kathleen A. Rubenstein, 46 IBLA 30 (1980). In that case, the first-drawn applicant had merely used an initial instead of a first name. However, the applicant had placed the initial and her last name on the front of the application and had signed the application on the reverse in the same manner. Thus, the signature comported with the name given on the application. The Board specifically held that such an offer was valid because the offeror could be identified from the information on the application and the card was signed in the same manner. That decision has no relevance in deciding this appeal.

Appellant points out that under 43 CFR 3112.6-1 (1981), "[m]isplacement of name * * * on the face of Form 3112-1 shall not be a basis for rejection." ^{8/} Appellant recognizes that this regulatory provision arises from the court's ruling in Brick v. Andrus, 628 F.2d 213 (D.C. Cir. 1980), a case in which an applicant had placed his first and last names in opposite order from the manner indicated on the lines provided for the applicant's name and address. The regulation excuses improper placement of a name where the identity of the applicant is clear. Ortman, however, did not merely misplace his name but also substituted another name where his should have appeared, thereby effectively concealing his identity as applicant. Ortman's last name is preceded by the symbol "c/o" which means "care of." Black's Law Dictionary 322 (rev. 4th ed. 1968). This indicates that Ortman was merely receiving correspondence for the addressee, Tonia Faris. There was absolutely no reason for BLM even to suspect that Ortman was the applicant. On the contrary, the use of the symbol "c/o" implies that Ortman was acting in a representative capacity with no intent to be bound as applicant. See International Store Co. v. Barnes, 3 S.W.2d 1039, 1041 (Mo. Ct. App. 1928).

[2] Appellant does not dispute BLM's need to be able to identify an applicant, but asserts that "if a question does arise as a result of ambiguity in the wording on the card or of the regulations, it cannot prejudice the misled applicant" (Statement of Reasons at 2). We find no ambiguity. The address on the application indicates where correspondence concerning the application should be sent. The application itself constitutes an article of mail, a fact that is obvious to anyone executing it because it bears a frank and states that the return of the application indicates that it was not selected. So that an applicant will be notified about actions concerning his

^{8/} The revised regulations discussed at note 4, supra, no longer include this provision.

application, the form plainly and unambiguously instructs him to use his personal or business address, a requirement also set forth in Departmental regulation 43 CFR 3112.2-1(d) (1981). ^{9/} Ortman contends that he used his own address and that nothing on the application requires the applicant to place his name on the first line. This is not correct. There can be no clearer violation of the requirement that an applicant use his address than addressing the application to someone else. ^{10/} Even if Ortman's signature were legible, it would be necessary to reject his application because he addressed it to someone else.

Furthermore, we see no empirical basis for concluding that the form is ambiguous. One can expect a certain amount of error by those who seek to comply with even the clearest instructions, and if a regulation or instruction is truly ambiguous, one would expect to find a significant measure of noncompliance resulting from the ambiguity. Despite the thousands of applications filed and leases awarded through the simultaneous filing system, this is the first appeal involving an applicant who addressed his application to someone else who is said to have no interest in the lease.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Franklin D. Arness
Administrative Judge
Alternate Member

We concur:

Edward W. Stuebing
Administrative Judge

Bruce R. Harris
Administrative Judge

^{9/} The revised regulations expressly require that an application include the applicant's name, 43 CFR 3112.2-1(b), 48 FR at 33678.

^{10/} Although the application does not expressly state that the applicant must place his or her name on the first line, such a requirement is implicit. The application states: "Use applicant's personal or business address." Clearly, an applicant would not put another person's name on the first line and use his own or her own address in the space provided. However, that is exactly the situation in this case. Since many signatures are to some degree indecipherable, with an application such as that used in this case, BLM had to rely on the name printed in the boxes as that of the applicant in preparing the lease offer form in accordance with 43 CFR 3112.4-1(a) (1982). Thus, BLM properly assumed that Tonia Faris was the applicant and that the address given was hers, even though correspondence addressed to her was to be received in care of "Ortman."

